

## **Part 7**

### **On-Premise Beer Retailer License**

#### **32B-6-701 Title.**

This part is known as "On-premise Beer Retailer License."

Enacted by Chapter 276, 2010 General Session

#### **32B-6-702 Definitions.**

As used in this part, "recreational amenity" is defined by the commission by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act. A rule made under this section shall define "recreational amenity" to be one or more of the following or an activity substantially similar to one of the following:

- (1) a billiard parlor;
- (2) a pool parlor;
- (3) a bowling facility;
- (4) a golf course;
- (5) miniature golf;
- (6) a golf driving range;
- (7) a tennis club;
- (8) a sports facility that hosts professional sporting events and has a seating capacity equal to or greater than 6,500;
- (9) a concert venue that has a seating capacity equal to or greater than 6,500;
- (10) one of the following if owned by a government agency:
  - (a) a convention center;
  - (b) a fair facility;
  - (c) an equestrian park;
  - (d) a theater; or
  - (e) a concert venue;
- (11) an amusement park:
  - (a) with one or more permanent amusement rides; and
  - (b) located on at least 50 acres;
- (12) a ski resort;
- (13) a venue for live entertainment if the venue:
  - (a) is not regularly open for more than five hours on any day;
  - (b) is operated so that food is available whenever beer is sold, offered for sale, or furnished at the venue; and
  - (c) is operated so that no more than 15% of its total annual receipts are from the sale of beer; or
- (14) concessions operated within the boundary of a park administered by the:
  - (a) Division of Parks and Recreation; or
  - (b) National Parks Service.

Amended by Chapter 2, 2011 Special Session 2

Amended by Chapter 2, 2011 Special Session 2

#### **32B-6-703 Commission's power to issue on-premise beer retailer license.**

- (1) Before a person may store, sell, offer for sale, furnish, or allow the consumption of beer on the premises as an on-premise beer retailer, the person shall first obtain an on-premise beer retailer license from the commission in accordance with this part.
- (2)
  - (a) The commission may issue an on-premise beer retailer license to establish on-premise beer retailer licensed premises at places and in numbers as the commission considers proper for the storage, sale, offer for sale, furnishing, and consumption of beer on premises operated as an on-premise beer retailer.
  - (b) At the time that the commission issues an on-premise beer retailer license, the commission shall designate whether the on-premise beer retailer is a tavern.
  - (c) The commission may change its designation of whether an on-premise beer retailer is a tavern in accordance with rules made by the commission.
  - (d)
    - (i) In determining whether an on-premise beer retailer is a tavern, the commission shall determine whether the on-premise beer retailer will engage primarily in the retail sale of beer for consumption on the establishment's premises.
    - (ii) In making a determination under this Subsection (2)(d), the commission shall consider:
      - (A) whether the on-premise beer retailer will operate as one of the following:
        - (I) a beer bar;
        - (II) a parlor;
        - (III) a lounge;
        - (IV) a cabaret; or
        - (V) a nightclub;
      - (B) if the on-premise beer retailer will operate as described in Subsection (2)(d)(ii)(A):
        - (I) whether the on-premise beer retailer will sell food in the establishment; and
        - (II) if the on-premise beer retailer sells food, whether the revenue from the sale of beer will exceed the revenue of the sale of food;
      - (C) whether full meals including appetizers, main courses, and desserts will be served;
      - (D) the square footage and seating capacity of the premises;
      - (E) what portion of the square footage and seating capacity will be used for a dining area in comparison to the portion that will be used as a lounge or bar area;
      - (F) whether the person will maintain adequate on-premise culinary facilities to prepare full meals, except a person that is located on the premises of a hotel or resort facility may use the culinary facilities of the hotel or resort facility;
      - (G) whether the entertainment provided on the premises of the beer retailer will be suitable for minors; and
      - (H) the beer retailer management's ability to manage and operate an on-premise beer retailer license including:
        - (I) management experience;
        - (II) past beer retailer management experience; and
        - (III) the type of management scheme that will be used by the beer retailer.
  - (e) On or after March 1, 2012:
    - (i) To be licensed as an on-premise beer retailer that is not a tavern, a person shall:
      - (A) maintain at least 70% of the person's total gross revenues from business directly related to a recreational amenity on or directly adjoining the licensed premises of the beer retailer, except that a person may include gross revenue from business directly related to a recreational amenity that is owned or operated by a political subdivision if the person has

- a contract meeting the requirements of Subsection (2)(e)(v) with the political subdivision;  
or
- (B) have a recreational amenity on or directly adjoining the licensed premises of the beer retailer and maintain at least 70% of the person's total gross revenues from the sale of food.
- (ii) The commission may not license a person as an on-premise beer retailer if the person does not:
  - (A) meet the requirements of Subsection (2)(e)(i); or
  - (B) operate as a tavern.
- (iii)
  - (A) A person licensed as an on-premise beer retailer that is not a tavern as of July 1, 2011 shall notify the department by no later than August 1, 2011, whether effective March 1, 2012, the person will seek to be licensed as a beer-only restaurant licensee, a tavern, or an on-premise beer retailer that meets the requirements of Subsection (2)(e)(i).
  - (B) If an on-premise beer retailer fails to notify the department as required by Subsection (2)(e)(iii)(A), the on-premise beer retailer's license expires as of February 29, 2012, and to operate as an on-premise beer retailer after February 29, 2012, the on-premise beer retailer is required to apply as a new licensee, and any bar or bar structure on the premises of an on-premise beer retailer license that is not a tavern and does not meet the requirements of Subsection (2)(e)(i) will not be grandfathered under Subsection 32B-6-902(1).
- (iv) A person who, after August 1, 2011, applies for an on-premise beer retailer license that is not a tavern and does not meet the requirements of Subsection (2)(e)(i), may not have or construct facilities for the dispensing or storage of an alcoholic product that do not meet the requirements of Subsection 32B-6-905(12)(a)(ii).
- (v) A contract described in Subsection (2)(e)(i)(A) shall:
  - (A) allow the beer retailer to include the total gross revenue from operations of the recreational amenity in the beer retailer's total gross receipts for purposes of Subsection (2)(e)(i)(A); and
  - (B) give the department the authority to audit financial information of the political subdivision to the extent necessary to confirm that the requirements of Subsection (2)(e)(i)(A) are met.
- (3) Subject to Section 32B-1-201:
  - (a) The commission may not issue a total number of on-premise beer retailer licenses that are taverns that at any time exceeds the number determined by dividing the population of the state by 73,666.
  - (b) The commission may issue a seasonal on-premise beer retailer license for a tavern in accordance with Section 32B-5-206.
- (4)
  - (a) Unless otherwise provided in Subsection (4)(b):
    - (i) only one on-premise beer retailer license is required for each building or resort facility owned or leased by the same person; and
    - (ii) a separate license is not required for each retail beer dispensing location in the same building or on the same resort premises owned or operated by the same person.
  - (b)
    - (i) Subsection (4)(a) applies only if each retail beer dispensing location in the building or resort facility operates in the same manner.
    - (ii) If each retail beer dispensing location does not operate in the same manner:

- (A) one on-premise beer retailer license designated as a tavern is required for the locations in the same building or on the same resort premises that operate as a tavern; and
- (B) one on-premise beer retailer license is required for the locations in the same building or on the same resort premises that do not operate as a tavern.

Amended by Chapter 82, 2016 General Session

**32B-6-704 Local authority to issue a license.**

- (1) A local authority may issue a license to operate as an on-premise beer retailer, subject to:
  - (a) the requirement under this part that a person obtain an on-premise beer retailer license issued by the commission to operate as an on-premise beer retailer; and
  - (b) subject to Title 11, Chapter 10, Business Allowing Consumption of Liquor on Premises.
- (2) For a violation of this title, rules of the commission, or a local ordinance, a local authority may suspend or revoke a business license described in Subsection (1).
- (3)
  - (a) If the commission suspends or revokes an on-premise beer retailer license issued by the commission under this title, the on-premise beer retailer may not continue to operate under a license issued by a local authority.
  - (b) If a local authority suspends or revokes a business license described in Subsection (1), an on-premise beer retailer may not continue to operate under the on-premise beer retailer license issued by the commission.
- (4) A person issued a business license issued by a local authority as described in Subsection (1) shall comply with this title, including a provision related to the storage, sale, offer for sale, furnishing, consumption, warehousing, or distribution of beer.

Enacted by Chapter 276, 2010 General Session

**32B-6-705 Specific licensing requirements for on-premise beer retailer license.**

- (1) To obtain an on-premise beer retailer license a person shall comply with Chapter 5, Part 2, Retail Licensing Process, except that an on-premise beer retailer is required to carry dramshop insurance coverage in accordance with Section 32B-5-201 only if the on-premise beer retailer sells more than \$5,000 of beer annually.
- (2)
  - (a) An on-premise beer retailer license expires on the last day of February each year.
  - (b) To renew a person's on-premise beer retailer license, a person shall comply with the renewal requirements of Chapter 5, Part 2, Retail Licensing Process, by no later than January 31.
- (3)
  - (a) The nonrefundable application fee for an on-premise beer retailer license is \$300.
  - (b)
    - (i) The initial license fee for an on-premise beer retailer license that is not a tavern is \$300.
    - (ii) The initial license fee for an on-premise beer retailer license that is a tavern is \$1,500.
  - (c)
    - (i) The renewal fee for an on-premise beer retailer license that is not a tavern is \$350.
    - (ii) The renewal fee for an on-premise beer retailer license that is a tavern is \$1,250.
- (4) The bond amount required for an on-premise beer retailer license is the penal sum of \$5,000.
- (5) Notwithstanding the other provisions of this part, if an applicant is a state agency or political subdivision of the state it is not required to:
  - (a) pay an application fee, initial license fee, or renewal fee;

- (b) obtain the written consent of the local authority;
- (c) submit a copy of the applicant's current business license; or
- (d) post a bond as specified by Section 32B-5-204.

Amended by Chapter 2, 2011 Special Session 2

Amended by Chapter 2, 2011 Special Session 2

**32B-6-706 Specific operational requirements for on-premise beer retailer license.**

- (1)
  - (a) In addition to complying with Chapter 5, Part 3, Retail Licensee Operational Requirements, an on-premise beer retailer and staff of the on-premise beer retailer shall comply with this section.
  - (b) Failure to comply as provided in Subsection (1)(a) may result in disciplinary action in accordance with Chapter 3, Disciplinary Actions and Enforcement Act, against:
    - (i) an on-premise beer retailer;
    - (ii) individual staff of an on-premise beer retailer; or
    - (iii) both an on-premise beer retailer and staff of the on-premise beer retailer.
- (2)
  - (a) An on-premise beer retailer is not subject to Section 32B-5-302, but shall make and maintain the records the department requires.
  - (b) Section 32B-1-205 applies to a record required to be made or maintained in accordance with this Subsection (2).
- (3) Notwithstanding Section 32B-5-303, an on-premise beer retailer may not store or sell liquor on its licensed premises.
- (4) Beer sold in a sealed container by an on-premise beer retailer may be removed from the on-premise beer retailer premises in the sealed container.
- (5)
  - (a) An on-premise beer retailer may not sell, offer for sale, or furnish beer at its licensed premises during a period that:
    - (i) begins at 1 a.m.; and
    - (ii) ends at 9:59 a.m.
  - (b)
    - (i) Notwithstanding Subsection (5)(a), a tavern shall remain open for one hour after the tavern ceases the sale and furnishing of beer during which time a patron of the tavern may finish consuming a single serving of beer not exceeding 26 ounces.
    - (ii) A tavern is not required to remain open:
      - (A) after all patrons have vacated the premises; or
      - (B) during an emergency.
- (6) Notwithstanding Section 32B-5-308, a minor may not be on the premises of a tavern.
- (7)
  - (a)
    - (i) An on-premise beer retailer may not purchase, acquire, possess for the purpose of resale, or sell beer except beer that the on-premise beer retailer lawfully purchases from:
      - (A) a beer wholesaler licensee; or
      - (B) a small brewer that manufactures the beer.
    - (ii) Violation of Subsection (7)(a)(i) is a class A misdemeanor.
  - (b)

- (i) If an on-premise beer retailer purchases beer under this Subsection (7) from a beer wholesaler licensee, the on-premise beer retailer shall purchase beer only from a beer wholesaler licensee who is designated by the manufacturer to sell beer in the geographical area in which the off-premise beer retailer is located, unless an alternate wholesaler is authorized by the department to sell to the off-premise beer retailer as provided in Section 32B-13-301.
  - (ii) Violation of Subsection (7)(b)(i) is a class B misdemeanor.
- (8) A tavern shall comply with Section 32B-1-407.

Amended by Chapter 2, 2011 Special Session 2

Amended by Chapter 2, 2011 Special Session 2

**32B-6-707 Application of part to other retail license type.**

- (1) A retail licensee who is not an on-premise beer retailer, but who sells, offers for sale, or furnishes beer pursuant to a different part under this chapter:
- (a) may sell, offer for sale, or furnish beer without obtaining a separate on-premise beer retailer license from the commission; and
  - (b) shall comply with the operational requirements under this part that apply to an on-premise beer retailer, except when a requirement of this part is inconsistent with or less restrictive than an operational requirement under the relevant part under this chapter for the type of retail license.
- (2) Failure of a retail licensee or staff of the retail licensee to comply with a requirement of this part may result in disciplinary action in accordance with Chapter 3, Disciplinary Actions and Enforcement Act, against:
- (a) a retail licensee;
  - (b) individual staff of a retail licensee; or
  - (c) both a retail licensee and staff of the retail licensee.

Enacted by Chapter 276, 2010 General Session

**32B-6-708 Information obtained by investigator.**

- (1) Subject to Subsection (2), if an investigator is permitted by another provision of this title to inspect a record of an on-premise beer retailer that is a tavern, in addition to any other rights under this title, the investigator may inspect, have a copy of, or otherwise review any record of the tavern that is a visual recording of the operations of the tavern.
- (2) An investigator who is a peace officer may not inspect, have a copy of, or otherwise review a visual recording described in Subsection (1) without probable cause.

Enacted by Chapter 276, 2010 General Session